IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.277/2001
(Dinesh Bohra Vs. The State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 374 Cr.P.C. AGAINST THE JUDGMENT DATED 30.04.2001 PASSED BY THE LEARNED SPECIAL JUDGE, SESSIONS COURT (PREVENTION OF CORRUPTION ACT), JODHPUR IN CRIMINAL CASE NO.98/97 (2/94) – STATE OF RAJASTHAN VS. NARENDRA MAL DAGA & ANR.

DATE OF JUDGMENT : 29th August, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. D.L.R.Vyas for the appellant.
Mr. O.P.Rathi, Public Prosecutor.

BY THE COURT :

1. This appeal is directed against the judgment & order dated 30.04.2001 passed by the learned Special Judge, Sessions Court

(Prevention of Corruption Act), Jodhpur in Criminal Case No.98/97(2/94), whereby, the learned trial judge has convicted accused appellant Dinesh Bohra for offence under Sections 7 and 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act of 1988) and sentenced him to six months' rigorous imprisonment and to pay a fine of Rs.500/-, in default of payment of fine to further undergo 15 days' simple imprisonment and also convicted for one year's rigorous imprisonment and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo one month's simple imprisonment respectively. The learned trial judge has convicted the accused appellant as indicated above, who said to have been the Cashier in the office of the Rajasthan Financial Corporation (Rural), Jodhpur (hereinafter referred to as the Corporation), as he accepted the bribe of Rs.500/- from complainant Ramdeen, whose loan was sanctioned by the Corporation on 25.5.92, but acquitted accused Narendra Mal Daga, the then Manager of the Corporation on account of alleged acceptance of bribe of Rs.5,000/- from the said complainant in the same transaction of loan. It is alleged by the prosecution that on 8.2.93, complainant Ramdeen filed a report before the Deputy Superintendent of Police, Rajasthan State Investigation Bureau, Jodhpur that the Manager of the Corporation is not issuing the cheque of sanctioned loan and calling him again and again and demanded

Rs.5,000/- as illegal gratification for each installment. The said demand was made on the previous day i.e. on 7.2.93. When he declined to fulfill the demand, the Manager of the Corporation called him in the office and asked for taking cheque and told him to reach at his house at 6 p.m. with an amount of Rs.5,000/-, else his next installment will not be disbursed. The complainant was called in the morning at 10.30 am on 8.2.93 in the office of the Corporation at Jodhpur, whereas, report was given to the Deputy Superintendent of Police at 10.15 am on the same day. At 12.30 pm, when complainant reached the office, the Manager of the Corporation called one employee and asked him to hand over the cheque and that employee also demanded Rs.500/- to be handed over to him between 6 to 8 pm at Garg and Company, outside Jalori Gate, Jodhpur. Thereafter, the trap was arranged by the Anti Corruption Party. A sum of Rs.5,000/- was recovered from the sofa cushion of the room of the Manager– Narendra Mal Daga at 7.40 pm and a sum of Rs.500/- was recovered from the shirt's pocket of accused appellant- Dinesh Bohra near Jalori Gate, Jodhpur at 8.30 pm. After obtaining sanction, the challan was filed against both the accused. Both the accused were charged under Sections 7 and 13(1)(d)II of the Act of 1988, to which they pleaded not guilty and claimed trial. The prosecution examined nine witnesses along with documents Ex.P-1 to Ex.P-30. The statements of both the accused were

recorded under Section 313 Cr.P.C. They produced one Ravindra Kumar Jain in defence and proved documents Ex.D-1 to Ex.D-9. After hearing the arguments, the learned trial judge acquitted the Manager of the Corporation namely Naendra Mal Daga, who said to have accepted bribe of Rs.5,000/- but convicted accused appellant Dinesh Bohra for accepting bribe of Rs.500/- for the same transaction of loan.

2. I have heard learned counsel for the accused appellant and the learned Public Prosecutor and gone through the record of the case. It has been vehemently argued by the learned counsel Mr.Vyas appearing on behalf of accused appellant that the learned trial judge has made a hostile discrimination in convicting the accused appellant who was merely a clerk in the office of the Corporation and who handed over the cheque at the instance of Narendra Mal Daga–the Manager of the Corporation, who has been acquitted for the charges levelled against him, specially when the demand of the alleged illegal gratification is said to have been made by the Manager of the Corporation. According to the learned counsel, neither there was any demand from the side of accused appellant Dinesh Bohra in running note Ex.P-1 nor any work was pending with the accused appellant, who was merely a clerk (Assistant) as no documentary evidence of he being cashier has come, and handed over the cheque at

the instance of the Manager of the Corporation. Learned counsel has also drawn my attention towards the statement of complainant Ramdeen, who has specifically stated in his examination in chief that accused appellant Dinesh Bohra simply told him to make the payment of Rs.500/- for Ex-servicemen Relief Fund and in cross, where he has denied having paid this amount as illegal gratification. On the issue of alleged payment towards flag, ample evidence has been led in defence, but the learned trial judge has ignored this version of the accused appellant in a casual manner. According to the learned counsel, in the running note, there is no reference of demand from the side of the accused appellant Dinesh Bohra which has been admitted by the Investigating Officer PW-9 Nawal Kishore. This has also been proved from the evidence of PW-3 Chetan Ram, who was a Constable in the Anti Corruption Department, Jodhpur, who prepared the running note. In the last line of his cross examination, this witness has stated that the memos were prepared earlier and running note was dictated later on. Learned counsel further argued that apart from the complainant Ramdeen, independent witnesses of Panchnama namely PW-6 Vasudeo Singh and PW-7 Lumba Ram have not supported the prosecution case and they have been declared hostile. Likewise, PW-4 Ghewar Chand Jain and PW-5 Navneet Kumar Sharma have also not supported the site plan Ex.P-8, said to

have been shown by accused appellant to the complainant. According to the learned counsel, the conviction of the accused appellant has been based solitary on the evidence of PW-9 Nawal Kishore, who has admitted in his cross examination that there is no entry in the running note that accused appellant Dinesh Bohra told that he is a Cashier and asked the complainant to pay Rs.500/- for illegal gratification. In support of his contention, learned counsel has placed reliance on the various judgments i.e. (1) V.Venkata Subbarao Vs. State represented by Inspector of Police, A.P., reported in 2007 Cri. L.J. 754; (2) Union of India through Inspector, CBI Vs. Purnandu Biswas, reported in 2005 (2) WLC (SC) Criminal 715; (3) T.Subramaniam Vs. State of Tamil Nadu, reported in 2006(1) WLC (SC) Criminal 448; (4) Punjabrao Vs. State of Maharashtra, reported in (2002) 10 SCC 371 and (5) Duraisami Vs. State of T.N., reported in 2005(2) WLC (SC) Criminal 570.

3. On the contrary, learned Public Prosecutor has supported the judgment of the learned trial court. Learned Public Prosecutor has submitted that State has not preferred any appeal against the judgment of acquittal of Narendra Mal Daga, the then Manager of the Corporation because the amount of Rs.5000/- was recovered not from his pocket but from the sofa cushion of his house, whereas, the amount of Rs.500/- was

recovered from the pocket of accused appellant Dinesh Bohra from the place Ex.P-8, where he demanded the amount.

4. Having bestowed my consideration on the contentions put forth by both the sides, it is strange to notice that the learned trial judge has miserably failed to appreciate the evidence on record. On the one hand, he is acquitting the principal accused, who made the demand for illegal gratification of Rs.5,000/-, which is said to have been recovered from the sofa cushion of his house and on the other hand, the learned trial judge has convicted a poor clerk. who simply handed over the cheque at the instance of the Manager of the Corporation despite there being no demand from him for the illegal gratification except that a sum of Rs.500/- be paid to him on account of Ex-servicemen Welfare Fund, for which he has led ample evidence in his defence. The factum of no demand is further strengthened from the evidence of PW-3 Chetan Ram that running note was prepared later on and memos were prepared earlier. From the evidence of PW-9 Nawal Kishore Dy. Superintendent of Police, in his cross examination there seems no reference of demand in the running note Ex.P-1. This itself shows that present appellant has been implicated with some ulterior motive and whole proceedings of phynopthelin powder etc. used on the 55 notes of one hundred each has been made at 1.45 pm on 8.2.93,

whereas, the FIR was lodged at 10.15 am and complainant went in the office at 12.30 pm and obtained the cheque of the sanctioned loan amount, thereafter, the trap was conducted at the residence of Narendra Mal Daga–the Manager of the Corporation at 7.50 pm by PW-8 Parbat Singh and PW-9 Nawal Kishore and reached to implicate the accused appellant at 8.20 pm at a place near Jalori Gate. From the perusal of the running note Ex.P-1, it appears that the trap party left the residence of the Manager at 8.05 pm and reached at the spot pointed out by the appellant at 8.20 pm, which is seldom possible to reach in such a short time from Kamla Nehru Nagar to Mahatama Gandhi Hospital.

5. The contention of the learned counsel for the accused appellant that a sum of Rs.500/- was given to the accused appellant by the complainant in pursuance to the Ex-Servicemen Relief Fund finds favour from the examination in chief of the complainant Ramdeen himself and it is fortified from the solitary testimony of PW-9 Nawal Kishore that there is no reference of demand for illegal gratification in the running note Ex.P-1 and also the documents produced by the side of the defence. Ex.D-1 is the letter dated 26.11.92 of Additional Collector, Jodhpur for collection of fund for Armed Military Flag Day, 1992. Ex.D-2 is the letter dated 1.7.92 of the Collector, Jodhpur for small

savings target for the year 1992-93. Ex.D-3 is the appreciation letter dated 22.6.93 issued by the Collector, Jodhpur. Ex.D-4 are the certificates of Indra Vikas Patra issued on 22.6.93. It these documents of defence are read in the light of the statement of complainant Ramdeen PW-1 & Nawal Kishore PW-9, it reveals that there was no demand for any illegal gratification for any pending work as the cheque was already issued prior to the trap.

6. The finding of the learned trial judge is based on the presumption to be drawn under Section 20 of the Act of 1988, is wholly misconceived. The presumption under the Act of 1988 can be drawn only if it is proved that the alleged gratification is for some consideration or for a consideration which needs to be inadequate. Sub-section (3) of Section 20 of the Act of 1988 further states that the Court may refuse to draw inference, if the gratification is so trivial from where no inference of corruption may fairly be drawn. Sub-section (3) of Section 20 of the Act of 1988 is as under :-

> (3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

This has also been held by the Hon'ble Supreme Court in V.Venkata Subbarao's case (supra-1) and in the case of Union of India through Inspector, CBI (supra-2).

7. Apart from the failure of the prosecution to fulfill the ingredients of demand in consideration of some work, the accused appellant has conveniently established from the very inception that he accepted a sum of Rs.500/- on account Ex-servicemen Relief Fund, which was to be collected by his office on the direction of the Collector, Jodhpur. When such type of explanation is offered by the accused appellant then it is not a reasonable and sufficient ground to fasten guilt on the accused and no inference of corruption can fairly be drawn. Explanation offered by the accused during trial and accepted by the complainant himself to pay the money for Ex-servicemen Relief Fund appears to be probable and reasonable. When such explanation is offered, the Courts are bound to accept it. This has also been held by their Lordships of the Hon'ble Supreme Court in the case of T.Subramaniam Vs. State of Tamil Nadu (supra-3) and in the case of Duraisami Vs. State of T.N. (supra-5). In the case of Punjabrao (supra-4), the Hon'ble Apex Court has gone to the extent that the accused can establish his defence by preponderance of probability. The relevant portion of the judgment of the Hon'ble Supreme Court in this case is as

under:

> "It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

8. In this way, the learned Public Prosecutor has not been able to counter the arguments advanced by the learned counsel for the accused appellant and to place any contradictory pronouncements as observed above. The evidence brought on record reveals that apart from perverse finding of the learned trial court on the conviction of accused appellant, the Investigating Agency has also acted with some extraneous consideration to implicate the present accused appellant, who was merely a clerk in the office of the Corporation. When they failed to successfully caught the Manager of the Corporation who said to have made demand and with whom the work was pending for issuing of the cheque to the complainant in a red handed manner, they rushed towards the accused appellant to strengthen their trap proceedings, else there was no occasion for them to approach the accused appellant against whom there was no charge of demand. The whole proceedings of trap have been

conducted against the accused appellant in a hot-haste manner and to implicate him under a serious charge of corruption to deprive him for his livelihood, which can safely be termed as an abuse of the process of law. The learned trial court while applying double standards has brushed aside the basic principles of the criminal jurisprudence that no person should be held guilty, unless it is proved beyond reasonable doubt. Under these circumstances whole trap proceedings and trial against accused appellant Dinesh Bohra has resulted in miscarriage of justice.

9. Consequently, this appeal is allowed. The conviction and sentence of six months' rigorous imprisonment and a fine of Rs.500/- for offence under Section 7 and one year's rigorous imprisonment and a fine of Rs.1000/- for offence under Section 13(1)(d)II of the Prevention of Corruption Act, 1988 awarded to accused appellant Dinesh Bohra by the learned Special Judge, Sessions Court (Prevention of Corruption Act), Jodhpur by his order dated 30.04.2001 is set aside. Appellant Dinesh Bohra is on bail, his bail bonds stand discharged.

(DEO NARAYAN THANVI), J.

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